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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/092,316	03/04/2002	Jason O'Young	LCB 388	9010

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Christopher S. Clancy  
Panduit Corp.  
Legal Department -TP12  
17301 Ridgeland Avenue  
Tinley Park, IL 60477

EXAMINER

BRITTAIN, JAMES R

ART UNIT

PAPER NUMBER

3677

DATE MAILED: 08/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/092,316

Applicant(s)

O'YOUNG ET AL.

Examiner

James R. Brittain

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 05 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 March 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION*****Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the height of the peaks changing gradually as described in "wherein the height of the peaks of the teeth gradually increases from the first end to the second end" (claim 11, lines 4-5) and "the gradual increase in the height of the peaks of the teeth from the first end to the second end allows the engagement surface to pivot down into engagement with the teeth" (claim 11, lines 8-9) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-11 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The passage "after the engagement surface

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is worn" (claim 1, lines 9-10; claim 7, lines 8-9; claim 11, lines 7-8) lacks written description in the application as filed. The term "worn" is not used in the application as filed and is a broad term that can describe many degradations of performance of the locking wedge engagement surface different than and well beyond the narrow deformation and elongation of the first tooth 64 of the locking wedge described in the specification. The passages "wherein the height of the peaks of the teeth gradually increases from the first end to the second end" (claim 11, lines 4-5) and "the gradual increase in the height of the peaks of the teeth from the first end to the second end allows the engagement surface to pivot down into engagement with the teeth" (claim 11, lines 8-9) lacks written description in the application as filed for there being a "gradual increase" in the height of the peaks of the teeth. The specification describes but two depths of the peaks and that there is a step down in the depth between the two depths. There is no disclosure of a "gradual" change in the depth in the application as filed. The remaining claims are rejected as lacking written description in the application as filed because of their dependence on claims rejected on this basis.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-11 are rejected under 35 U.S.C. §103(a) as being unpatentable over Kreiseder (US 4236280) in view of Caveney et al. (US 3949449).

Kreiseder (figures 1, 3) teaches a cable tie, comprising a strap body made of nylon (col. 4, line 5) with a strap body having a first end and a second end opposite the first end, wherein the strap body includes a first group of teeth 20 having peaks at a first predetermined height which is no higher than the top surface of the strap as shown in figure 3 and a second group of teeth 18 having peaks at a second predetermined height above the top surface of the strap as shown in figure 3, the second predetermined height by extending beyond the top surface of the strap is greater than the first predetermined height which is no higher than the top surface of the strap. The first group of teeth 20 is closer to the first end of the strap and the locking head 16 than the second group of teeth 18. The device functions as a cable tie so that the locking teeth 28 on the latch inherently function when the strap is inserted through the locking head so as to grip the first group of teeth 20. The difference is that the locking head uses a latch 24 that does not act as a locking wedge. However, Caveney et al. (figures 2, 5, 9, 10) teaches similar cable tie structure with teeth 115 on the strap for engagement with the pawl 150 and gripping projections 108 wherein it is desirable to have a pawl 150 shaped to function as a wedge as described in "Referring again to FIG. 10, it will be seen that a portion of the pawl 150 adjacent to the hinge 151 and at the lower end of the rear surface 154 contacts the surface 132 after the pawl 150 is pivoted and shifted downwardly and rearwardly, this portion of the pawl 150 serving as a stop member to limit the rearward shifting to the pawl 150" (col. 7, lines 16-22) and "During the final tensioning movement of the parts from the position illustrated in FIG. 9 to that illustrated in FIG. 10, the ready collapsibility of the hinge 151 permits the pawl 150 to be readily

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seated upon the ledge 135, and once the pawl 150 is seated upon the ledge 135, there is a maximum resistance to further retrograde movement of the pawl 150 and the strap 101 since the pawl 150 is firmly supported in the tensioned position thereof by the ledge 135" (col. 6, lines 2-10) and "Referring to FIG. 9, it will be noted that even in the most clockwise position of the pawl 150 with respect to the frame 120, there is ample clearance between the rear surface 154 of the pawl 150 and the inner surface 132 of the end wall 131, thereby to permit unrestricted flexure of the pawl 150 during insertion of the strap into the frame 120. This is important to prevent damage to the teeth 155 on the pawl during insertion of the strap 101 through the frame 120" (col. 7, lines 7-15). As it would be advantageous to strengthen the cable tie of Kreiseder, it would have been obvious to modify the cable tie of Kreiseder so that the locking latch is a locking wedge as suggested by Caveney et al. teaching that the use of a locking wedge provides distinct advantages since the pivoting and lateral shifting provides a wedging action with maximum resistance to retrograde movement of the strap while yet permitting the strap to be inserted without damaging the teeth on the engagement surface of the locking wedge, both being beneficial results. There is no claimed requirement that the locking wedge being capable of locking engagement with both the first and second group of teeth to prevent retrograde movement of both the first and the second group of the teeth depending on whether the locking wedge is engaged with the first group of teeth or the second group of teeth.

In regard to claim 2, 3, 8, and 9, the difference is that the size differential between the two groups of teeth is unstated as being between 0.001 and 0.007 inches

and specifically 0.003 inches. However, Kreiseder teaches the use of a height differential to provide for manual engagement wherein the second group of teeth 18 has a greater height. It would have been obvious to pick a particular range or particular difference because applicant has not shown any unexpected result over that of the teachings of Kreiseder. There is no claimed requirement that the locking wedge lock in engagement with the second group of teeth to prevent retrograde movement of the second group of the teeth.

As to claim 11, while the cable tie of Kreiseder shows a step up in tooth height between the first group 20 and the second group 18 in a manner similar to applicant's, the use of a gradual increase in tooth height is seen as obvious since applicant has shown no unexpected result over the step up in tooth height taught by Kreiseder.

### ***Response to Arguments***

Applicant's arguments filed June 5, 2003 have been fully considered but they are not persuasive. Applicant describes the deformation and elongation of the first tooth 64 on page 6, ¶2 of the remarks. This is considered far narrower than the broad recitation of the engagement surface of the locking pawl being "worn" as now claimed. Wear can take place on any of the other locking teeth of the engagement surface of the locking wedge or in a mode totally different than deformation and elongation of the first tooth 64, for instance cracking and separation of portions of a tooth without any deformation or elongation. The term "worn" is of broader scope than the written description as filed and its inclusion is new matter. The prior rejections have been withdrawn because applicant has amended the claims to indicate that the strap has a first group of teeth

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closer to the locking head than the second group of teeth, wherein the second group of teeth has a height greater than the first group of teeth and the reference of Wells (US 3717906), Munch (US 4214349), Bingold (US 5159728), and Koike (US 5584452) while having two groups of teeth of different height, locate the groups so that the teeth of greater height are located closer to the locking head, the opposite of what is now claimed.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James R. Brittain whose telephone number is 703-308-

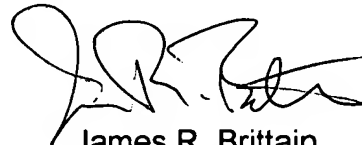


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2222. The examiner can normally be reached on M, W & F 5:30-1:30, T 5:30-2:00 & TH 5:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on 703-306-4115. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

A handwritten signature in black ink, appearing to read 'J.R. Brittain', is positioned above the printed name.

James R. Brittain  
Primary Examiner  
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JRB